

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code section 249A.4 and 2009 Iowa Acts, House File 811, section 32(13), the Department of Human Services amends Chapter 82, "Intermediate Care Facilities for the Mentally Retarded," Iowa Administrative Code.

These amendments:

- Reflect the change to a 3 percent inflation factor for reimbursement of intermediate care facilities for the mentally retarded in state fiscal year 2010 that was mandated by 2009 Iowa Acts, House File 811, section 32(10); and
- Make technical changes to update the chapter to current Iowa Medicaid organization and terminology.

Current administrative rules state that the inflation factor shall be the percent change from December to December of the Consumer Price Index for all urban consumers, U.S. city average (CPI-U). For state fiscal year 2010, the CPI-U factor is 0.1 percent. Computing reimbursement using this factor would essentially freeze ICF/MR reimbursement rates for state fiscal year 2010. With a 3 percent inflation rate, the estimated average per diem reimbursement rate increases from \$386 per day to \$397 per day, for a total statewide increase in reimbursement of \$8.8 million for state fiscal year 2010. Costs to the state are estimated at \$0.9 million, and costs to county governments are estimated at \$1.6 million.

These amendments do not provide for waivers in specified situations, since an increase in reimbursement is a benefit to providers. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments September 16, 2009.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because these amendments implement changes mandated by 2009 Iowa Acts, House File 811, section 32, which authorizes the Department to adopt rules without notice and public participation.

These amendments are also published herein under Notice of Intended Action as **ARC 8208B** to allow for public comment.

These amendments are intended to implement Iowa Code section 249A.4 and 2009 Iowa Acts, House File 811, section 32(10).

These amendments will become effective on December 1, 2009.

The following amendments are adopted.

ITEM 1. Amend subrule 82.5(6) as follows:

82.5(6) *Census of ~~public assistance recipients~~ Medicaid members.* Census figures of ~~public assistance recipients~~ Medicaid members shall be obtained on the last day of the month ending the reporting period.

ITEM 2. Amend paragraph **82.5(9)“b”** as follows:

b. When a ~~recipient~~ member is on a reserve bed status and the department is paying on a per diem basis for the holding of a bed, or any day a bed is reserved for a public assistance or nonpublic assistance patient and a per diem rate for the bed is charged to any party, the reserved days shall be included in the total census figures for in-patient days.

ITEM 3. Amend subrule 82.5(14) as follows:

82.5(14) *Payment to new facility.* A facility receiving Medicaid ICF/MR certification on or after July 1, 1992, shall be subject to the provisions of this subrule.

a. No change.

b. Initial cost report. Following six months of operation as a Medicaid-certified ICF/MR, the facility shall submit a report of actual costs. The rate computed from this cost report shall be adjusted to 100 percent occupancy plus the annual percentage increase of the Consumer Price Index for all

urban consumers, U.S. city average (hereafter referred to as the Consumer Price Index). For the period beginning July 1, 2009, and ending June 30, 2010, 3 percent shall be used to adjust costs for inflation, instead of the annual percentage increase of the Consumer Price Index. Business start-up and organization costs shall be accounted for in the manner prescribed by the Medicare and Medicaid standards. Any costs that are properly identifiable as start-up costs, organization costs or capitalizable as construction costs must be appropriately classified as such.

(1) and (2) No change.

c. No change.

d. Completion of 12 months of operation. Following the first 12 months of operation as a Medicaid-certified ICF/MR as described in subrule 82.5(14), the facility shall submit a cost report for the second six months of operation ~~and an~~. An on-site audit of facility costs shall be performed by the accounting firm under contract with the department. Based on the audited cost report, a rate shall be established for the facility. This rate shall be considered the base rate until rebasing of facility costs shall occur occurs.

(1) A new maximum allowable base cost will be calculated each year by increasing the prior year's maximum allowable base by the annual percentage increase of the Consumer Price Index ~~for all urban consumers, U.S. city average (hereafter referred to as the Consumer Price Index).~~ For the period beginning July 1, 2009, and ending June 30, 2010, the prior year's maximum allowable base cost shall be increased by 3 percent, instead of the annual percentage increase of the Consumer Price Index.

(2) Each year's maximum allowable base cost represents the maximum amount that ~~could~~ can be reimbursed.

e. No change.

f. Incentive factor. New facilities which complete the second annual period of operation that have an annual per unit cost percentage increase of less than the percentage increase of the Consumer Price Index, as described in 82.5(14) "d," shall be given their actual percentage increase plus one-half the difference of their actual percentage increase compared to the allowable maximum percentage increase. This percentage difference ~~times~~ multiplied by the actual per diem cost for the annual period just completed is the incentive factor. For the period beginning July 1, 2009, and ending June 30, 2010, the incentive factor shall be calculated using 3 percent in place of the percentage increase of the Consumer Price Index.

(1) The incentive factor will be added to the new reimbursement base rate to be used as the per diem rate for the next annual period of operation.

(2) Facilities whose annual per unit cost decreased from the prior year shall be given their actual per unit cost plus one and one-half the percentage increase in the Consumer Price Index as an incentive for cost containment.

g. Reimbursement for first annual period. The reimbursement for the first annual period will be determined by ~~taking multiplying~~ the per diem rate calculated for the base period ~~and then multiplying it by the Consumer Price Index Urban Consumers U.S. City Average and adding it to the base rate plus one.~~

(1) The projected reimbursement for each period thereafter (until rebasing) will be calculated by ~~taking multiplying~~ the lower of the prior year's actual or the projected reimbursement per diem ~~times by~~ the Consumer Price Index ~~and adding it to the lower of the two plus one.~~ For the period beginning July 1, 2009, and ending June 30, 2010, the projected reimbursement will be determined using a multiplier of 3 percent instead of the Consumer Price Index.

(2) If a facility experiences an increase in actual costs that exceeds both the actual reimbursement and the maximum allowable base cost as determined for that annual period, ~~it the facility~~ shall receive as reimbursement in the following period the maximum allowable base as calculated ~~as reimbursement.~~

(3) All calculated per diem rates shall be subject to the prevailing maximum rate.

ITEM 4. Amend subrule 82.5(16) as follows:

82.5(16) Payment to existing facilities. The following reimbursement limits shall apply to all non-state-owned ICFs/MR:

a. to c. No change.

d. Facilities which have an annual per unit cost percentage increase of less than the percentage increase of the Consumer Price Index, or of less than 3 percent for rates effective July 1, 2009, through June 30, 2010, shall be given their actual percentage increase plus one-half the difference of their actual percentage increase compared to the allowable maximum percentage increase. This percentage difference ~~times~~ multiplied by the actual per diem costs for the annual period just completed is the incentive factor.

(1) The incentive factor will be added to the new reimbursement base rate to be used as the per diem rate for the following annual period.

(2) Facilities whose annual per unit cost decreased from the prior year shall receive their actual per unit cost plus one and one-half the percentage increase in the Consumer Price Index ~~plus, as an incentive for cost containment, one-half the percentage increase in the Consumer Price Index.~~ For the period beginning July 1, 2009, and ending June 30, 2010, 3 percent shall be used in lieu of the percentage increase in the Consumer Price Index.

e. and f. No change.

g. Total patient days for purposes of the computation shall be inpatient days as determined in subrule 82.5(7) or 80 percent of the licensed capacity of the facility, whichever is greater. The reimbursement rate shall be determined by dividing total reported patient expenses by total patient days during the reporting period. This cost per day will be limited by an inflation increase which shall not exceed the percentage change in the Consumer Price Index ~~for all urban consumers, U.S. City Average.~~ For the period beginning July 1, 2009, and ending June 30, 2010, the inflation increase shall be 3 percent, notwithstanding the percentage change in the Consumer Price Index.

h. State-owned ICFs/MR shall submit semiannual cost reports and shall receive semiannual rate adjustments based on actual costs of operation inflated by the percentage change in the Consumer Price Index, ~~All Urban Consumers, U.S. City Average.~~ For the period beginning July 1, 2009, and ending June 30, 2010, costs of operation shall be inflated by 3 percent instead of the percentage change in the Consumer Price Index.

i. The projected reimbursement for the first annual period will be determined by ~~taking multiplying~~ the per diem rate calculated for the base period ~~and then multiplying it by the Consumer Price Index and adding it to the base rate plus one.~~

(1) The projected reimbursement for each period thereafter (until rebasing) will be calculated by ~~taking multiplying~~ the lower of the prior year's actual or the projected reimbursement per diem ~~times by the Consumer Price Index and adding it to the lower of the two plus one.~~ For the period beginning July 1, 2009, and ending June 30, 2010, the projected reimbursement will be determined using a multiplier of 3 percent instead of the Consumer Price Index.

(2) If a facility experiences an increase in actual costs that exceeds both the actual reimbursement and the maximum allowable base cost as determined for that annual period, ~~it the facility shall receive as reimbursement in the following period the maximum allowable base as calculated as reimbursement.~~

ITEM 5. Amend subrule 82.7(3) as follows:

82.7(3) ~~Approval by Iowa Foundation for Medical Care of level of care.~~ Medicaid payment shall be made for intermediate care facility for the mentally retarded care upon certification of need for this level of care by a licensed physician of medicine or osteopathy and approval by the Iowa Foundation for Medical Care ~~which is designated as the professional standards review organization for the state~~ Medicaid enterprise (IME) medical services unit. ~~The Iowa Foundation for Medical Care IME medical services unit shall review ICF/MR admissions and transfers only when documentation is provided which verifies a referral from targeted case management which that includes an approval by the central point of coordination.~~

ITEM 6. Amend subrule 82.7(4) as follows:

82.7(4) ~~Appeal rights.~~ Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7. ~~The applicant or consumer is entitled to have a review of the level of care determination by the Iowa Foundation for Medical Care by sending a letter requesting a review to the foundation. If~~

~~dissatisfied with that decision, the applicant or consumer may file an appeal with the department.~~ The applicant or consumer for whom the county has legal payment responsibility shall be entitled to a review of adverse decisions by the county by appealing to the county pursuant to 441—paragraph 25.13(2) “j. ” If dissatisfied with the county’s decision, the applicant or consumer may file an appeal with the department according to the procedures in 441—Chapter 7.

ITEM 7. Amend rule 441—82.8(249A) as follows:

441—82.8(249A) Determination of need for continued stay. Certification of need for continued stay shall be made according to procedures established by the Iowa ~~Foundation for Medical Care~~ Iowa Medicaid enterprise (IME) medical services unit.

This rule is intended to implement Iowa Code section 249A.12.

ITEM 8. Amend paragraph **82.9(3)“f”** as follows:

f. Upon a ~~patient’s~~ member’s death, a receipt shall be obtained from the next of kin or the ~~resident’s member’s~~ guardian before releasing the balance of the personal needs funds. When the ~~recipient member~~ has been receiving a grant from the department for all or part of the personal needs, any funds shall revert to the department. The department shall turn the funds over to the ~~resident’s member’s~~ estate.

ITEM 9. Amend subrules 82.10(1) and 82.10(2) as follows:

82.10(1) Notice. When a ~~public assistance recipient~~ Medicaid member requests transfer or discharge to a community setting, or another person requests this for the ~~recipient member~~, the administrator shall promptly notify ~~the county office of the department~~ a targeted case management provider. Names of local providers are available from the department’s local office. This shall be done in sufficient time to permit a ~~social service worker~~ case manager to assist in the decision and planning for the transfer or discharge.

82.10(2) Case activity report. A Case Activity Report, Form 470-0042, shall be submitted to the department whenever a Medicaid applicant or ~~recipient member~~ enters the facility, changes level of care, or is discharged from the facility.

ITEM 10. Amend rule 441—82.11(249A) as follows:

441—82.11(249A) Continued stay review. The ~~Iowa Foundation for Medical Care~~ Iowa Medicaid enterprise (IME) medical services unit shall be responsible for reviews of each resident’s need for continuing care in intermediate care facilities for the mentally retarded.

This rule is intended to implement Iowa Code section 249A.12.

ITEM 11. Amend rule 441—82.12(249A) as follows:

441—82.12(249A) Quality of care review. The ~~Iowa Foundation for Medical Care~~ Iowa Medicaid enterprise (IME) medical services unit shall carry out the quality of care studies in intermediate care facilities for the mentally retarded.

This rule is intended to implement Iowa Code section 249A.12.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/7/09.